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THE SITUATION IN CENTRAL AMERICA: PROCEDURES FOR THE ESTABLISHMENT OF A FIRM AND LASTING PEACE AND PROGRESS IN FASHIONING A REGION OF PEACE, FREEDOM, DEMOCRACY AND DEVELOPMENT

Report of the Secretary-General

I. INTRODUCTION

1. The present report is submitted pursuant to General Assembly resolution 49/137 of 19 December 1994, in which I was requested, inter alia, to devise, in consultation with the Government of El Salvador, the Member States and the specialized agencies, "procedures for providing El Salvador, in the context of the Peace Agreement, with the necessary cooperation and assistance in the period after the United Nations Observer Mission in El Salvador (ONUSAL), in order to safeguard peace and the strengthening and consolidation of national reconciliation, democracy and sustainable development".

2. It will be recalled that on 6 February 1995, before the expiration of the mandate of ONUSAL, I informed the President of the Security Council of my intention to set up a team of United Nations officials to provide good offices and verify implementation of the outstanding provisions of the peace agreements (S/1995/143). The President of the Security Council subsequently notified me that the Security Council members welcomed this arrangement (S/1995/144).

3. On 27 April 1995, the parties to the Chapultepec peace agreements signed a programme of work for the completion of all outstanding areas of the peace accords (S/1995/407). On the following day the Security Council adopted resolution 991 (1995), formally marking the end of the mandate of ONUSAL. The new Mission of the United Nations in El Salvador (MINUSAL) began its work as planned on 1 May 1995, led by Mr. Enrique ter Horst, my Special Representative. With its staff partly funded by voluntary contributions, MINUSAL has represented a much reduced United Nations presence, but one that confirms the Organization's continuing support of peace-building in El Salvador. In May 1995 I established

the Trust Fund for MINUSAL in order to support the Mission's activities. I would like to take this opportunity to thank those countries that have already made contributions to the fund (Denmark, Norway and Sweden) and encourage others to do so.

4. The programme of work had divided the remaining accords into six areas (public security, land transfer, human settlements, reinsertion programmes, Fund for the Protection of the Wounded and Disabled, and legislative reforms) and established dates by which specific provisions in each area must be completed. It also provided for weekly convening of bilateral and trilateral monitoring and follow-up mechanisms which facilitated the work of the mission and, in some areas, accelerated execution of pending points. Monthly updates on the status of the programme of work, which I have circulated informally to members of the Security Council, have revealed the continuing determination of the parties to the peace agreements to bring them to completion. They have also revealed the difficulties and obstacles in carrying this process forward, as well as the need for the authorities concerned to apply themselves to this task with vigour, addressing these difficulties and obstacles with all necessary sense of purpose.

5. MINUSAL has continued to exercise its good offices with a view to assisting in carrying the process forward, and in so doing has contributed to the generation of confidence in the ongoing process of consolidating advances through the strengthening of El Salvador's democratic institutions, as well as the full implementation of the peace agreements. Five months after the establishment of the Mission, it is clear that implementation of some elements of the peace accords remains incomplete, while significant delays persist in the case of others.

6. The present report assesses the state of implementation of the various aspects of the peace agreements verified by MINUSAL between 1 May and 30 September 1995. Besides the introduction and my concluding observations, the report is divided into six sections, related to: public security; human rights and the judicial system; economic and social issues; electoral matters; technical assistance programmes; and administrative aspects.

II. PUBLIC SECURITY

7. The creation of a new civilian police force, the National Civil Police (PNC), was one of the fundamental elements of the peace agreements, and perhaps their most ambitious single component. In the two and a half years that have elapsed since its initial deployment, PNC has expanded and assumed virtually all public security functions. In the three years since its foundation, the National Public Security Academy (ANSP) has graduated a total of 8,482 agents, of whom some 200 are mid- and high-level officers. While the strength of PNC has now exceeded by some 2,700 the target indicated in the accords, it has continued to appear insufficient to counter the growing tide of crime afflicting the country. Public insecurity, fostered by already high levels of common crime, has only grown in the face of an increase in violence associated with drug trafficking, organized crime and the proliferation of street gangs and illegally armed vigilante groups that have arisen to combat them.

8. In this disturbing situation, the authorities have argued that the continuing deployment of joint patrols of PNC and the Armed Forces in rural areas is necessary to combat and deter delinquency. In August 1995 some officials publicly recommended extending these patrols to urban areas, a suggestion that was officially dismissed by the Armed Forces. As I noted in my last report on the work of ONUSAL (S/1995/220, para. 23), the use of military forces for public security purposes is not in compliance with the constitutional procedures established pursuant to the peace accords, except when the National Civil Police has been found incapable of addressing a specific crisis. The President may then issue such an order only if it is accompanied by a notification to the Legislative Assembly. The Mission has suggested that this constitutional provision be regulated by a secondary law.

9. Compliance with most of the points in the area of public security identified by the programme of work, while welcome in itself, has not served to strengthen PNC and ANSP institutionally. Rather, in this domain a series of troubling developments have arisen that point to a potential reversal in the process of consolidating PNC and highlight a lack of coherence between its development and the public security scheme designed in the peace accords. These developments have included: months of delay in the naming of an Inspector General of PNC during a period in which reported irregularities within PNC have evidenced the urgent need for the effective occupation of this position; a reluctance to renew fully the Division of Criminal Investigation and develop the Department of Investigation of Organized Crime; strong indications of criminality, including alleged assassination and the membership of illegal armed groups, within PNC itself; and initiatives to develop and enhance public security structures parallel to and possibly undermining those mandated by the peace agreements.

10. Indicative of these developments is the fact that the Police Career Law, indispensable for guaranteeing the professional proficiency and ethical conduct of PNC, has yet to be approved. However, it is to be welcomed that the Government has requested that MINUSAL advise on the drafting of the Law, and that it be submitted to the Legislative Assembly before the end of November 1995. At the further request of the Government, the Mission has carried out a second evaluation of the public security sector with recommendations for governmental action.

11. The developments outlined above make it clear that it is of crucial importance that government efforts to counter the exceptionally high levels of criminality affecting the country should not be carried out at the expense of training new police agents and the further development of PNC into an institution which will be effective in protecting the rights of all Salvadorians.

III. HUMAN RIGHTS AND THE JUDICIAL SYSTEM

12. The profile of the office of the National Counsel for Human Rights (NCHR) has risen markedly since the election of a new ombudswoman in March 1995. Its institutional development, which is supported by a technical assistance project of the United Nations Development Programme (UNDP), moves steadily forward. It

is to be welcomed that coordination between NCHR and PNC in handling public disturbances has improved considerably, particularly in the capital. However, in order to discharge its mandate fully NCHR will require continued strengthening and a higher budgetary provision.

13. The area of the programme of work that has seen the least advance during the past five months is approval of the legislative reforms required to comply with the binding recommendations of the Commission on the Truth. The Legislative Assembly has approved only the Government's ratification of international human rights legal agreements and deposit of the necessary instruments with the secretariats of the United Nations and the Organization of American States and the Government's recognition of the jurisdiction of the Inter-American Court of Human Rights. However, two MINUSAL staff members are actively participating in current technical discussions being carried out in the Assembly. Four of the most important legal texts (the new Penal and Criminal Procedures codes, the new Penitentiary Law and the Constitutional Reforms related to the guarantees of due process) seem likely to be approved before the end of November 1995. The other reforms for which the programme of work set a deadline of 31 October 1995 will not be ready for approval before mid-1996.

14. The screening and vetting of judges by the Supreme Court of Justice elected in July 1994 has been proceeding slowly. MINUSAL has continued to encourage the Court in the good work it has initiated, but this effort is far from nearing completion. The preparation by the Court of the legal texts mandating further judicial reforms for submission to the Legislative Assembly in accordance with the programme of work has yet to begin.

IV. ECONOMIC AND SOCIAL ISSUES

15. The delays that have plagued the land transfer programme (PTT) persist as it enters into its final and most difficult stage. They can be attributed both to continuing problems of a legal, technical and procedural nature and to the increasing scarcity of land for sale. Recurring problems with mid-level administrators in the Lands Bank in particular have suggested that political factors may also have contributed to the delays.

16. Increased efforts by the relevant Government bodies from April to July 1995 led to a notable increase in the number of beneficiaries (to an average of 1,400 a month) who received land titles. As of 19 September 1995, 74 per cent of the potential beneficiaries had received titles to land. However, it has recently come to light that only 25 per cent of these beneficiaries had had their titles filed with the land registry. A follow-up team has been formed to facilitate the legal processes for registration. The land programme can only be considered to have been completed when the beneficiaries are able to register their titles and thus to sell the land if they so wish. A sharp decline in the rate of transfer in the month of August is a source of concern and could portend a considerable delay in meeting the goals of the programme of work.

17. It is consistent with the logic of the land transfer programme that the complex issue of relocation has been left to the end. In coming months the rate of transfer is likely to remain low as it becomes necessary to relocate both

those who are on lands whose owners do not want to sell and those within human settlements who are also potential beneficiaries of PTT but are unable to satisfy their land requirements nearby. Past experience of relocation has been discouraging, with most of the relocated beneficiaries abandoning their land or returning to their place of origin.

18. Firm advances have recently been registered in the area of rural human settlements, albeit after lengthy delays in the approval of the special regime for their transfer. This was finally achieved in August 1995, together with agreement on an operational plan. At current rates of progress it is foreseeable that before 31 October 1995 the transfer of the rural human settlements may have begun. The complex social and political circumstances of the rural human settlements indicates that the transfer of their productive, social and habitational infrastructure will remain an issue of particular delicacy, with a potential for aggravated social tension within the regions where they are situated. If these problems are not sorted out, the goal of completing this area of the programme in the second quarter of 1996 could be in jeopardy.

19. All certificates within the initial universe of beneficiaries identified by the Frente Farabundo Martí para Liberación Nacional (FMLN) for the urban human settlements have been distributed by Government authorities. However, the legalization and registry of beneficiaries' titles, a prerequisite for the disbursement of funds, is likely to prove a complex and lengthy process.

20. Reintegration programmes have been advancing steadily. Only a few specific components remain and it is likely that they will be completed before the end of the year. However, concerns have been growing about the impact of the programmes on those they have benefited and their sustainability over the medium and long term. In this context the Government has recently requested UNDP to prepare an evaluation of the effectiveness of the reintegration programmes.

V. ELECTORAL MATTERS

21. The experience of the presidential, legislative and local government elections of 1994 convinced participants and observers alike that profound reforms to the Salvadorian electoral system were necessary (S/1994/536, para. 17). During 1995, pursuant to an agreement outside the framework of the peace accords, a presidentially appointed inter-party commission issued a series of recommendations on electoral reform. The commission called for a new single identity and voter registration card to be issued by an autonomous body created for that end alone, the introduction of residential voting, the drawing-up of a new electoral roll and the reform of the Supreme Electoral Tribunal. However, progress in the area of electoral reforms has recently been hindered by the proposed introduction of proportional representation at the municipal level, to which the majority within the Legislative Assembly objects.

22. In order to ensure the legitimacy of the local government and legislative elections of 1997, I would urge members of all parties to ensure the timely adoption of the electoral reforms. I would also like to reiterate that an administrative and structural transformation is necessary if the Supreme

Electoral Tribunal is to become a credible, professional, democratic and non-partisan institution.

VI. TECHNICAL ASSISTANCE PROGRAMMES

23. MINUSAL and UNDP have jointly prepared a set of 10 technical assistance projects critical for consolidating the peace process and, in particular, for strengthening the institutions created or reformed by the peace accords. These technical assistance projects, which have a total cost of US$ 9.8 million, cover administration of justice, public security and land and reintegration programmes and have been submitted to donor countries for funding. As of September 1995, the donor community had announced the contribution, via distinct funding mechanisms, of $4.23 million, which will allow for four projects in the areas of public security and administration of justice to be implemented. Activities within two further projects in the area of administration of justice can also be initiated. UNDP, responding at the Government's request, continues to seek funds for the remaining programmes.

VII. ADMINISTRATIVE ASPECTS

24. MINUSAL comprises 11 international staff, 8 civilian police consultants and a small administrative team and is supported by UNDP in the financial disbursement of allotted funds and other administrative functions.

25. MINUSAL has deployed its police consultants throughout the country, thus facilitating on-the-spot verification of compliance with the programme of work. The advances registered since 1 May 1995 make it possible to reduce their number and bring down MINUSAL's strength to 10 international staff, 4 civilian police consultants and support staff.

26. Mr. Enrique ter Horst, who has been Chief of Mission of both ONUSAL (since April 1994) and MINUSAL, left El Salvador at the end of September 1995 to return to the Venezuelan diplomatic service. He has been replaced as my Representative and Director of Mission by Mr. Ricardo Vigil. Mr. Vigil is well known to the parties in El Salvador as he opened the preparatory office for what eventually became ONUSAL in January 1991 and then served with ONUSAL as Principal Political and Legal Adviser to the Chief of Mission until March 1992.

VIII. OBSERVATIONS

27. MINUSAL's ability to carry out its functions successfully has been attributable in large measure to its retention of some of ONUSAL's most experienced civilian and police staff, thus ensuring continuity in verification of the outstanding areas of the peace agreements and in the exercise of good offices.

28. While there is no question of the Government's political will to comply fully with its commitments under the peace agreements, I agree with it and FMLN that the continued presence of a small Mission is necessary to fulfil the

undertaking of the United Nations to verify implementation of the peace agreements. Depending on the rate of progress in the coming months, it should be possible to reduce further the size of the Mission and gradually phase it out.

29. In the immediate future, it is of paramount importance that efforts to counter the increase in criminal activity do not jeopardize the institutional development of PNC and the Police Academy and that these objectives be pursued simultaneously and in a mutually reinforcing manner. The concept of the National Civil Police, as embodied in the peace accords, must be preserved and sustained. It is encouraging that the Government is aware of the need to change course and, in agreement with FMLN, asked MINUSAL to evaluate the public-security sector and present recommendations to that end.

30. Close monitoring and support for the land transfer programme, as well as for the transfer of the rural human settlements, will continue to be necessary at the regional and central levels in order to address bottlenecks and encourage an increase in the pace of implementation. MINUSAL will also continue to provide advisory support to the formulation of the legislative reforms required by the recommendations of the Commission on the Truth.

31. For the above reasons, I propose to extend the Mission for a further six months, until 30 April 1996, with a gradual reduction of its strength and costs. I am encouraged to believe that a substantial portion of the budget for its extension will be funded by donor countries, a number of whom have already generously contributed to the process of implementing and consolidating the peace accords.